

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

JUN - 2 1997

Federal Communications Commission  
Office of Secretary

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

DOCKET FILE COPY ORIGINAL

COMMENTS OF BELL ATLANTIC AND NYNEX

The North American Numbering Council and all the people who have participated in its activities have done an exemplary job of carrying out the Commission's directives and doing so on the expedited schedule established by the Commission. The NANC's recommendations concerning the implementation of number portability are sound and, with only one exception, should be adopted without modification. Bell Atlantic and NYNEX urge the Commission to act expeditiously on these recommendations, so that the industry can get on with the task of implementing them.

In one respect, the NANC recommendation is inconsistent with the Commission's *Number Portability Order*<sup>1</sup> and with section 251(e)(1) of the Act. This is because the NANC proposes to give various regional limited liability corporations ("LLCs") oversight and control over the local number portability administrators ("LNPAs").<sup>2</sup> The Commission has correctly determined that the LNPAs must be "impartial" and not associated with any particular segment of the telecommunications industry. The LLCs, however, are corporations that are in all cases

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<sup>1</sup> *Telephone Number Portability*, 11 FCC Rcd 8352, 8400-01 (1996).

<sup>2</sup> To date, the LLCs have conducted successful procurements for LNPAs services and have handled a variety of technical and operational issues. We do not suggest that any of this work was not done impartially or should be set aside for any other reason.

currently controlled by “competitive” LECs. They do not represent the interests of all users of local numbering resources and were formed solely to implement landline portability. Putting them in charge of the LNPAs, without strong detailed guidelines from the Commission, cannot satisfy the Commission’s standards of impartiality and lack of association with a particular industry segment.

This situation is easily remedied in ways that will not disrupt on-going implementation efforts. First, the Commission should follow the plan recommended by the NANC for oversight of the new NANPA and adopt regulations under which the LNPAs will operate. Second, the Commission could give oversight responsibility to some industry body that operates under the openness and consensus rules of ANSI. Third, it appears that existing Commission precedent will require that at least some of the LNPAs’ services must be offered under tariff, a procedure that would also ensure impartiality. In fact, tariffing seems particularly appropriate here, because the LLCs have said that access to LNPA services will be offered on a non-negotiable, take-it-or-leave-it basis. With these controls in place, there might be an appropriate contract administration role for the LLCs; however, the Commission may well conclude that it is not efficient to perpetuate seven separate LLCs for this limited purpose.

In addition, in a couple of areas, the NANC report contains general recommendations that must be more fully developed either by the Commission or appropriate industry bodies. The Commission should ensure that these matters are resolved in time for the first round of implementation later this year.

**The LLCs May Not Control the LNPAs.**

The NANC proposes that each LNPA “be established under the Regional LLC” and that the LLC “manage” the LNPA. This management includes “ongoing direction of the third party’s activities,” ensuring that the prices charged by the LNPA are consistent with Commission directives and prioritizing the LNPA’s work efforts.<sup>3</sup>

Giving this power to the LLCs is inconsistent with the Commission’s direction. The Commission ordered that the LNPAs must be “neutral third parties,” in particular, that they must be “independent, non-governmental entities that are not aligned with any particular telecommunications industry segment.”<sup>4</sup> The entities that the LLCs have selected to be the LNPAs, Lockheed Martin and Perot Systems, fit this bill. However, the total arrangement is not neutral and impartial because Lockheed and Perot are “established under,” are “managed” by and are accountable on a day-to-day basis to a joint venture of telecommunications carriers.<sup>5</sup>

In connection with toll-free number administration, two carriers that have supported this role for the LLCs have told the Commission that the sort of relationship that exists here is inconsistent with impartiality and neutrality. In comments filed two weeks ago, AT&T

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<sup>3</sup> North American Numbering Council Local Number Portability Administration Selection Working Group Report (“NANC Rep.”), App. D (Architecture and Administrative Plan for Local Number Portability) ¶¶ 12.2.1-.2.

<sup>4</sup> *Number Portability Order* ¶¶ 92, 93.

<sup>5</sup> The language the Commission used to describe the impartiality of the LNPAs is the same as it used to describe the new NANPA in paragraph 57 of the *Number Administration Order*, 11 FCC Rcd 2588 (1995). This indicates that the same degree of independence and freedom from industry influence is required for LNPAs as for the NANPA. If it is not consistent with the Commission’s direction (or with section 251(e)(1) of the Communications Act) if the new NANPA were “managed” by a joint venture of telecommunications carriers, then it is not consistent with the Commission’s direction to establish the LNPAs in that way either.

told the Commission that “[a]ny [numbering] administrator that is affiliated *or in a contractual relationship with*” the Bell companies would be unacceptable.<sup>6</sup> If a contractual relationship with the Bell companies contaminates the toll-free number administrator, then a contractual relationship with a joint venture of CLECs must be similarly defective. Sprint wants to replace the Bell companies with a governing board carefully designed by the Commission to be “more representative.”<sup>7</sup> There is, of course, no such requirement on the LLCs.<sup>8</sup>

The concern about the role of the LLCs is not just hypothetical or speculative. The Mid-Atlantic LLC has already interfered with Bell Atlantic’s efforts to work with Lockheed Martin, the firm selected to be the LNPA in the mid-Atlantic states.<sup>9</sup> Bell Atlantic needs access to Lockheed Martin’s services to comply with its obligations to provide number portability. In particular, it must have access to comply with the Maryland commission’s number portability implementation plan even before it needs access under the Commission’s schedule. Beginning in early January, Bell Atlantic has asked the LLC to allow Bell Atlantic to observe the LLC’s contract discussions with the Lockheed. The LLC has consistently refused. When Bell Atlantic called Lockheed in February to begin discussions of test arrangements and contract terms, Lockheed said that the LLC had instructed it not to discuss these matters with Bell Atlantic.

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<sup>6</sup> Comments of AT&T Corp. at 2 in *Toll Free Service Access Codes*, CC Dkt. 95-155, dated May 22, 1997 (emphasis added).

<sup>7</sup> [Sprint] Comments at 4 in *Toll Free Service Access Codes*, CC Dkt. 95-155, dated May 22, 1997.

<sup>8</sup> As the Bell companies explained in their comments in this docket, because toll-free number administration is provided under tariff, it is, by definition, being performed in an impartial manner and, therefore, does not raise any issues under section 251(e)(1). Joint Comments of the Bell Companies and Bellcore at 4-5 in *Toll Free Service Access Codes*, CC Dkt. 95-155, dated May 22, 1997.

<sup>9</sup> To date, NYNEX has had no similar problems with the LLC in its territory.

Three months later, with the implementation date three months closer, Bell Atlantic has just begun to receive technical information it needs from Lockheed. The problems continue, however. Lockheed has now advised Bell Atlantic that the LLC requires Bell Atlantic to sign a User Agreement with Lockheed before Bell Atlantic can begin testing with Lockheed and that testing must begin in mid June. However, with this deadline only two weeks away, the LLC has refused to provide even a draft of the User Agreement that it has been working on for months.

The NANC report argues that the LLCs are, in fact, competitively neutral. The heart of the argument is that the LLCs are open bodies — that any LEC can join — and each member has an equal vote.<sup>10</sup> These facts are not a cure. If the end result is an entity that is, in fact, aligned with a particular industry segment, then it fails the Commission’s test, whether or not it is open to all. While “openness” may indicate neutrality in bodies that operate by consensus, this is not the case in the “majority rules” world of LLCs.

Nor does the fact, also relied on by the NANC,<sup>11</sup> that the LNPA would ultimately be subject to federal and state regulatory oversight cure this problem. The same could be said for any entity that was an LNPA, even a telecommunications carrier. If this were sufficient to ensure neutrality (and the appearance of neutrality), there would have been no need for the Commission to put any constraints on who could be an LNPA. It should also be noted that this exact same oversight did not protect Bellcore from charges that it was not impartial as NANPA.

There are three alternatives to the NANC’s approach that are consistent with the statute and the *Number Portability Order*.

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<sup>10</sup> NANC Rep. ¶¶ 4.4.1-.3.

<sup>11</sup> NANC Rep. ¶¶ 4.4.5-.6.

First, and best, the Commission should handle the LNPAs in the same way that the NANC proposes to handle the NANPA — the Commission should adopt rules to govern the operation of the LNPAs. If this makes sense for the new NANPA, it surely makes sense for the LNPAs.

Second, the Commission could delegate oversight of the LNPAs to an industry or standards body that operates by consensus under the rules of the American National Standards Institute. The NANC could not do this job because, as a federal advisory committee, it may only provide advice to a federal government department or agency.

Finally, the Commission could ensure that the LNPAs act impartially by requiring them to provide their services under tariff. In fact, it appears that Commission precedent will require tariffing in any event. The LNPAs will provide a service management system to permit local telephone number portability. The 800 service management system provides those same functions for 800 (and now 888) number portability. When the Commission considered the SMS for 800 service, it found that it was a common carrier communications service that had to be offered under tariff.

The Commission gave the following reasons for requiring the tariffing of 800 SMS:

The service is “incidental to the provision of” a service under Commission jurisdiction and “is absolutely necessary to the provision of” that service.

The entity providing the service “is under a legal compulsion to hold itself out indiscriminately to the clientele it is suited to serve.”

The “importance of ensuring that SMS access is provided at reasonable rates and on nondiscriminatory terms, and because of the untried nature of the proposed alternative mechanisms for achieving these goals.”<sup>12</sup>

These reasons apply equally to LNPA services. Section 251(e) puts the establishment of number portability under the Commission’s jurisdiction, and LNPA services are “absolutely necessary” to Bell Atlantic’s and NYNEX’s ability to provide number portability. The LNPAs are required to provide their services and to do so without discrimination.<sup>13</sup> The alternative proposed by the NANC — oversight by seven LLCs — is completely untried and, given the membership of those entities, unlikely to achieve the Commission’s goals.

#### **Details Must Be Filled In.**

The NANC report makes general recommendations in a number of areas that must be further developed before portability is implemented. The Commission should make sure that this happens, either by undertaking the job itself or requiring industry bodies to do so.

For example, the NANC recommends that customers should be allowed to port telephone numbers that they have reserved but that have not been activated<sup>14</sup> and that disconnected telephone numbers should “snap-back” to the original carrier.<sup>15</sup> Bell Atlantic and NYNEX have no quarrel with these principles, but guidelines must be developed to ensure that

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<sup>12</sup> *Provision of Access for 800 Service*, 8 FCC Rcd 1402, ¶¶ 27-29 (1993).

<sup>13</sup> NANC Rep. ¶ 4.4, App. D ¶¶ 12.2.2-.3.

<sup>14</sup> NANC Rep., App. D ¶ 7.7.

<sup>15</sup> NANC Rep., App. D ¶ 7.9.

there is consistency in the industry and that there is no abuse.<sup>16</sup> Moreover, reserved telephone numbers should not be ported until there is a way to administer the resource and a mechanism for ensuring that they are not used for another customer.

The NANC report also notes that “further study” is required concerning the effects of number portability on high volume call-in numbers and to ensure that calls to such numbers do not cause network congestion.<sup>17</sup> It is imperative that this work be completed before these numbers are ported.

### **Conclusion**

The Commission should adopt the recommendations of the NANC, except that it should reject the proposal for unsupervised LLC management of the LNPAs and establish instead one of the three oversight arrangements described in these comments. It should also ensure that the industry puts flesh on the bones of the NANC recommendations before portability is implemented later this year.

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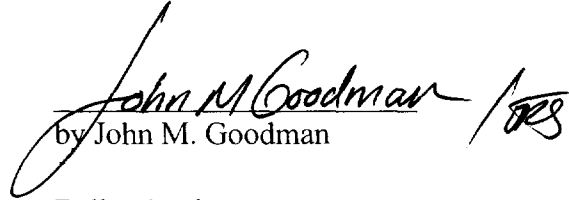
<sup>16</sup> The Commission recently acted to prevent unreasonable practices in connection with the reservation of toll-free numbers. *Toll Free Service Access Codes*, Second Report and Order, CC Dkt. 95-155, FCC 97-123 (rel. April 11, 1997).

<sup>17</sup> NANC Rep., App. D ¶ 7.13.



Respectfully submitted,

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